



CITY OF LODI COUNCIL COMMUNICATION

AGENDA TITLE: Adopt Resolution Repealing Resolution No. 2009-120 and Approving Vacation of Surplus Portion of Loma Drive Lying Adjacent to Parcel Located at 1310 West Turner Road and Authorizing City Manager to Execute Amended Agreement to Exchange Vacated Right-of-way for Public Improvements

MEETING DATE: November 4, 2009

PREPARED BY: Public Works Director

RECOMMENDED ACTION: Adopt a resolution repealing Resolution No. 2009-120 and approving vacation of surplus portion of Loma Drive lying adjacent to parcel located at 1310 West Turner Road and authorizing the City Manager to execute an amended agreement to exchange the vacated right-of-way for public improvements.

BACKGROUND INFORMATION: On September 2, 2009, the Council adopted Resolution No. 2009-120 to vacate a surplus portion of Loma Drive and authorized the City Manager to execute an agreement to exchange the vacated right-of-way for public improvements. Subsequent to the adoption of the resolution, staff discovered that the legal descriptions attached to the resolution and the agreement were incorrect. The corrected documents vacate the exact same area of land as intended in the original documents and agreement. Staff therefore recommends the Council adopt the attached resolution and authorize the City Manager to execute the attached amended agreement to reflect the correct legal descriptions of the properties described therein.

FISCAL IMPACT: Not applicable.

FUNDING AVAILABLE: Not applicable.

A handwritten signature in cursive script, reading "F. Wally Sandelin".

F. Wally Sandelin
Public Works Director

Prepared by Denise Wiman, Senior Engineering Technician

FWS/DSW/pmf

Attachments

cc: Denise Wiman, Senior Engineering Technician
Chris Boyer, Junior Engineer

APPROVED:

A handwritten signature in cursive script, reading "Blair King".

Blair King, City Manager

**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

City Clerk
City of Lodi, City Hall
221 Pine Street
Lodi, CA 95241

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)
)
)
)
)
)

APN: 039-030-03
ADDRESS: 1310 W. TURNER RD

(Space Above for Recorder's Use Only)

AMENDED AGREEMENT FOR THE ACQUISITION OF VACATED RIGHT-OF-WAY

THIS AGREEMENT is made and entered into by and between the CITY OF LODI, hereinafter referred to as "City" and MICHAEL W. STALLINGS and PATRICIA STALLINGS, husband and wife as joint tenants, hereinafter referred to as "Owner".

RECITALS:

Owner is the owner of that certain real property situated in the City of Lodi, County of San Joaquin, known as 1310 West Turner Road (APN 039-030-03) and incorporated herein by this reference and described as follows:

All of Lots 3 and 4, Lake Home Subdivision, in the City of Lodi, filed for record in Vol. 11 of Maps and Plats, page 30, San Joaquin County Records.

Excepting from said lot 4, the Easterly 20 feet thereof, as conveyed to City of Lodi, a municipal corporation, by deed dated July 14, 1944, in Vol. 877 of Official records, page 496, San Joaquin County Records.

WHEREAS, the City has adopted Resolution of Vacation (Resolution No. 2009-____ attached as Exhibit A) to vacate a surplus portion of Loma Drive lying adjacent to Owner's parcel at 1310 W. Turner Road; and

WHEREAS, Owner has obtained a building permit (Permit # B08-1537) to remodel the existing residence at 1310 W. Turner Road; and

WHEREAS, Owner is required to install sidewalk along Loma Drive as a condition of approval of said building permit; and

WHEREAS, Owner wishes to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by an existing garage and to provide the necessary setback to allow the construction of a masonry wall along the Loma Drive frontage for privacy; and

WHEREAS, the existing wheelchair ramp at the southwest corner of the Turner Road/Loma Drive intersection is not in compliance with current ADA standards;

NOW THEREFORE, it is mutually stipulated and agreed as follows:

1. Owner agrees to remove and replace, at Owner's expense, the existing wheelchair ramp at southwest corner of the Turner Road/Loma Drive intersection in conformance with City

standards under the terms of an encroachment permit to be obtained from the Public Works Department.

2. City agrees to present owner with a grant deed for the vacated surplus right-of-way in exchange for the above specified improvements upon completion and acceptance by the City of said improvements.
3. Owner agrees to assume responsibility for the maintenance of the existing street trees along the Loma Drive frontage of Owner's parcel.
4. City agrees to allow the installation by the Owner or Owner's contractor of private landscape and irrigation improvements that encroach into the remaining Loma Drive right-of-way to facilitate the maintenance of the existing street trees under the terms of an encroachment permit to be obtained from the Public Works Department.
5. Owner agrees to save, defend, indemnify and hold harmless the City, its officers, agents and employees, from liability of any nature whatsoever arising from Owner's use or occupation of the Loma Drive right-of-way or City action requiring the removal and relocation of the encroaching private landscape and irrigation improvements.
6. This agreement shall run with the land and be binding on the Owner, its heirs, successors or assigns.
7. Herein is set forth the entire agreement between the parties. The performance of these conditions constitutes full performance and shall relieve City of all further obligations or claims.
8. In the event either party hereto breaches the terms, conditions and covenants of this Agreement, then, the prevailing party in any suit to enforce this Agreement or restrain the breach thereof, shall in addition to any other relief or damages awarded, be entitled to a reasonable attorney's fee and all costs of suit to be set and determined by any court of competent jurisdiction and added to any judgment obtained.
9. This agreement shall be recorded in the office of the San Joaquin County Recorder, P. O. Box 1968, Stockton, California, 95201-1968.

IN WITNESS WHEREOF, Owner and City have caused their names to be hereunto affixed and the City of Lodi has caused its corporate name and seal to be hereunto affixed by its proper officers thereunto duly authorized.

MICHAEL W. STALLINGS

DATE

PATRICIA STALLINGS

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

Seal

(CORPORATE SEAL)

CITY OF LODI, A MUNICIPAL CORPORATION

BY: _____

Blair King, City Manager

Date

CERTIFICATE OF ACKNOWLEDGEMENT OF NOTARY PUBLIC

STATE OF CALIFORNIA,)
COUNTY OF SAN JOAQUIN)

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Signature of Notary Public)

Seal

ATTEST:

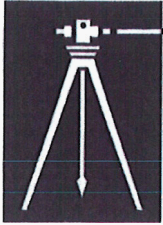
Randi Johl, City Clerk

Date

APPROVED AS TO FORM:

Janice D. Magdich, Deputy City Attorney

Date



BAUMBACH & PIAZZA, INC.

CIVIL ENGINEERS • LAND SURVEYORS

www.bpengineers.net

323 W. Elm Street
Lodi, CA 95240-2003
Phone (209) 968-6618
Pax (209) 368-6610

Legal Description
City Abandonment

All that certain real property situated in the City of Lodi, County of San Joaquin, State of California, and being more particularly described as follows:

The east 20 feet of Lot 4, as shown on the Map entitled, "LAKE HOME SUBDIVISION" recorded in Volume 11 of Maps and Plats, Page 30, San Joaquin County Records.

EXCEPT THEREFROM a portion of said Lot 4 and being more particularly described as follows:

Beginning at the southeast corner of said Lot 4; thence North $67^{\circ}18'00''$ West, 1.36 feet along the south line of said Lot 4; thence North $00^{\circ}54'00''$ West, 129.80 feet parallel with the east line of said Lot 4; thence North $25^{\circ}04'39''$ West, 21.97 feet; thence North $00^{\circ}54'00''$ West, 55.75 feet parallel with said east line; thence North $51^{\circ}17'29''$ West, 12.75 feet to the North line of said Lot 4; thence easterly along said North line along a curve to the left having a radius of 1240.00 feet, a central angle of $0^{\circ}56'42''$, and an arc length of 20.45 feet to the northeast corner of said Lot 4; thence South $00^{\circ}54'00''$ East, 218.18 feet along the east line of said Lot 4 to the point of beginning.



[Handwritten signature]
8/2/09

RESOLUTION NO. 2009-155

A RESOLUTION OF THE LODI CITY COUNCIL REPEALING
RESOLUTION 2009-120 AND VACATING A SURPLUS
PORTION OF LOMA DRIVE LYING ADJACENT TO PARCEL
LOCATED AT 1310 WEST TURNER ROAD AND AUTHORIZING
THE CITY MANAGER TO EXECUTE AN AMENDED
AGREEMENT WITH MICHAEL AND PATRICIA STALLING TO
EXCHANGE THE VACATED RIGHT-OF-WAY FOR PUBLIC
IMPROVEMENTS

=====

WHEREAS, the Council hereby repeals Resolution No. 2009-120; and

WHEREAS, Michael and Patricia Stallings, the owners of 1310 West Turner Road (the "Property") have requested the vacation of a portion of a 20-foot street right-of-way dedicated to the City of Lodi on July 28, 1944, and more particularly described in the revised Attachment 1; and

WHEREAS, the right-of-way has not been used by the City for the purpose for which it was dedicated or for any other use; and

WHEREAS, the Streets and Highways Code of the State of California §8333 provides that the legislative body of a local agency may summarily vacate a public service easement if the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation and the easement has been superseded by relocation and there are no other public facilities located within the easement; and

WHEREAS, pursuant to the requirements of Government Code §27288.1, the names of the owners of the title or interest in the Property as they appear on the latest equalized assessment roll are:

Owners: Michael and Patricia Stallings

WHEREAS, in accordance with Streets and Highways Code §8300 et seq., it is the desire of the City Council of the City of Lodi to vacate such street right-of-way; and

WHEREAS, the property within the proposed vacation is owned in fee by the City of Lodi and will not automatically revert to the adjacent property owners at 1310 West Turner Road upon vacation; and

WHEREAS, the owners of 1310 West Turner Road wish to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by the existing garage and to provide the necessary setback to allow the construction of a masonry wall along Loma Drive frontage; and

WHEREAS, the existing wheelchair ramp at the Turner Road/Loma Drive intersection if constructed today would not be in compliance with current ADA standards, the property owners of 1310 West Turner Road have offered to remove and replace the existing wheelchair ramp in exchange for the vacated right-of-way; and

WHEREAS, the cost to the City to install a wheelchair ramp in conformance with current ADA standards is approximately \$10,000; and

WHEREAS, staff feels the owners' request is reasonable and is similar to past practice whereby street improvements were provided by the City in exchange for right-of-way dedications.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows:

1. That the 20-foot street right-of-way located on the westerly side of Loma Drive between Turner Road (as described in revised Attachment 1) and the railroad be vacated; and

2. That from and after the date this resolution is recorded, such property will not longer constitute a street right-of-way; and

3. That in exchange for the removal and replacement of the existing wheelchair ramp located at the intersection of Turner Road and Loma Drive with an ADA-compliant wheelchair ramp by the Property owners, the City of Lodi will transfer the vacated right-of-way to the Property owners, Michael and Patricia Stallings.

Dated: November 4, 2009

=====

I hereby certify that Resolution No. 2009-155 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 4, 2009, by the following vote:

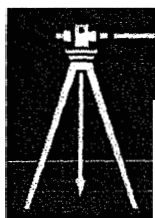
AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None


RANDI JOHL
City Clerk


BAUMBACH & PIAZZA, INC.
CIVIL ENGINEERS • LAND SURVEYORS
www.bpenginers.net

323 W. Elm Street
Lodi, CA 95240-2003
Phone (209) 368-6618
Fax (209) 368.6610

Legal Description
City Abandonment

All that certain real property situated in the City of Lodi, County of San Joaquin, State of California, and being more particularly described as follows:

The east 20 feet of Lot 4, as shown on the Map entitled, "LAKE HOME SUBDIVISION" recorded in Volume 11 of Maps and Plats, Page 30, San Joaquin County Records.

EXCEPT THEREFROM a portion of said Lot 4 and being more particularly described as follows:

Beginning at the southeast corner of said Lot 4; thence North $67^{\circ}18'00''$ West, 1.36 feet along the south line of said Lot 4; thence North $00^{\circ}54'00''$ West, 129.80 feet parallel with the east line of said Lot 4; thence North $25^{\circ}04'39''$ West, 21.97 feet; thence North $00^{\circ}54'00''$ West, 55.75 feet parallel with said east line; thence North $51^{\circ}17'29''$ West, 12.75 feet to the North line of said Lot 4; thence easterly along said North line along a curve to the left having a radius of 1240.00 feet, a central angle of $0^{\circ}56'42''$, and an arc length of 20.45 feet to the northeast corner of said Lot 4; thence South $00^{\circ}54'00''$ East, 218.18 feet along the east line of said Lot 4 to the point of beginning.



[Handwritten Signature]
8/7/09



DECLARATION OF MAILING

LETTER AND RESOLUTION TO SUMMARILY VACATE SURPLUS PORTION OF LOMA DRIVE LYING ADJACENT TO PARCEL LOCATED AT 1310 WEST TURNER ROAD

On December 8, 2009, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing letter and resolution to summarily vacate surplus portion of Loma Drive lying adjacent to parcel located at 1310 West Turner Road, attached hereto Marked Exhibit A. The mailing list for said matter is attached hereto, marked Exhibit B.

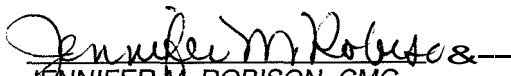
There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 8, 2009, at Lodi, California.

ORDERED BY:

RANDI JOHL
CITY CLERK, CITY OF LODI


JENNIFER M. ROBISON, CMC
ASSISTANT CITY CLERK

MARIA BECERRA
ADMINISTRATIVE CLERK

CITY COUNCIL

PHIL KATZAKIAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNE MOUNCE

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702 / FAX (209) 333-6807
www.lodi.gov cityclerk@lodi.gov

BLAIR KING, City Manager
RANDI JOHL, City Clerk
D. STEPHEN SCHWABAUER
City Attorney

December 7, 2009

TO: Interested Parties

**VACATION: TO SUMMARILY VACATE SURPLUS PORTION OF LOMA DRIVE
LYING ADJACENT TO PARCEL LOCATED AT 1310 WEST
TURNER ROAD**

This is to inform you that the City Council, at its regular meeting on November 4, 2009, considered the above matter and declared the area summarily vacated and abandoned.

Enclosed for your information is a certified copy of the recorded resolution along with a description of the abandoned area.

Should you have questions regarding the abandonment, please contact the Public Works Department at (209) 333-6706.



Randi Johl
City Clerk

RJ/jmr

Enclosure

cc: Public Works Department

RESOLUTION NO. 2009-155



A RESOLUTION OF THE LODI CITY COUNCIL REPEALING
RESOLUTION 2009-120 AND VACATING A SURPLUS
PORTION OF LOMA DRIVE LYING ADJACENT TO PARCEL
LOCATED AT 1310 WEST TURNER ROAD AND AUTHORIZING
THE CITY MANAGER TO EXECUTE AN AMENDED
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EXCHANGE THE VACATED RIGHT-OF-WAY FOR PUBLIC
IMPROVEMENTS

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WHEREAS, the Council hereby repeals Resolution No. 2009-120; and

WHEREAS, Michael and Patricia Stallings, the owners of 1310 West Turner Road (the "Property") have requested the vacation of a portion of a 20-foot street right-of-way dedicated to the City of Lodi on July 28, 1944, and more particularly described in the revised Attachment 1; and

WHEREAS, the right-of-way has not been used by the City for the purpose for which it was dedicated or for any other use; and

WHEREAS, the Streets and Highways Code of the State of California §8333 provides that the legislative body of a local agency may summarily vacate a public service easement if the easement has not been used for the purpose for which it was dedicated or acquired for five consecutive years immediately preceding the proposed vacation and the easement has been superceded by relocation and there are no other public facilities located within the easement; and

WHEREAS, pursuant to the requirements of Government Code §27288.1, the names of the owners of the title or interest in the Property as they appear on the latest equalized assessment roll are:

Owners: Michael and Patricia Stallings

WHEREAS, in accordance with Streets and Highways Code §8300 et seq., it is the desire of the City Council of the City of Lodi to vacate such street right-of-way; and

WHEREAS, the property within the proposed vacation is owned in fee by the City of Lodi and will not automatically revert to the adjacent property owners at 1310 West Turner Road upon vacation; and

WHEREAS, the owners of 1310 West Turner Road wish to acquire the vacated right-of-way to remedy an encroachment into the right-of-way by the existing garage and to provide the necessary setback to allow the construction of a masonry wall along Loma Drive frontage; and

WHEREAS, the existing wheelchair ramp at the Turner Road/Loma Drive intersection if constructed today would not be in compliance with current ADA standards, the property owners of 1310 West Turner Road have offered to remove and replace the existing wheelchair ramp in exchange for the vacated right-of-way; and

WHEREAS, the cost to the City to install a wheelchair ramp in conformance with current ADA standards is approximately \$10,000; and

WHEREAS, staff feels the owners' request is reasonable and is similar to past practice whereby street improvements were provided by the City in exchange for right-of-way dedications.

NOW, THEREFORE, BE IT RESOLVED by the Lodi City Council as follows:

1. That the 20-foot street right-of-way located on the westerly side of Loma Drive between Turner Road (as described in revised Attachment 1) and the railroad be vacated; and

2. That from and after the date this resolution is recorded, such property will not longer constitute a street right-of-way; and

3. That in exchange for the removal and replacement of the existing wheelchair ramp located at the intersection of Turner Road and Loma Drive with an ADA-compliant wheelchair ramp by the Property owners, the City of Lodi will transfer the vacated right-of-way to the Property owners, Michael and Patricia Stallings.

Dated: November 4, 2009

=====

I hereby certify that Resolution No. 2009-155 was passed and adopted by the City Council of the City of Lodi in a regular meeting held November 4, 2009, by the following vote:

AYES: COUNCIL MEMBERS – Hitchcock, Johnson, Katzakian, and Mayor Hansen

NOES: COUNCIL MEMBERS – None

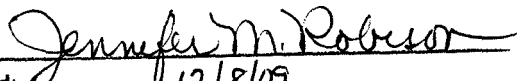
ABSENT: COUNCIL MEMBERS – Mounce

ABSTAIN: COUNCIL MEMBERS – None

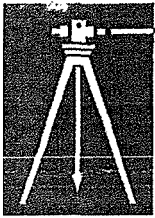

RANDI JOHL
City Clerk

The foregoing document is certified to be a true copy of the original on file in the City Clerk's Office.

Jennifer M. Robison
Assistant City Clerk, City of Lodi

By: 
Dated: 12/8/09

REVISED ATTACHMENT 1



BAUMBACH & PIAZZA, INC.

CIVIL ENGINEERS • LAND SURVEYORS

www.bpengineers.net

323 W. Elm Street
Lodi, CA 95240-2003
Phone (209) 368-6618
Fax (209) 368-6610

Legal Description City Abandonment

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**VACATION / ABANDONMENT
MAILING LIST**

RESOLUTION OF INTENTION (Setting Public Hearing)

Certified copy w/cover letter to:

PG&E
12 W. Pine Street
Lodi, CA 95240

AT&T
6505 Tam O Shanter Drive
Stockton, CA 95210

AT&T California
Attn: Engineering/Public Works Dept.
2300 E. Eight Mile Road
Stockton, CA 95210

Central Valley Waste Services
P.O. Box 241001
Lodi, CA 95241-9501

Chief Deputy County Surveyor
Attn: Joe Bussalacci
1810 E. Hazelton Avenue
Stockton, CA 95205

Certified copies to:

Denise Wiman, Public Works

Wes Fujitani, Public Works

Community Development Department

Police Department

Fire Department

RESOLUTION OF VACATION (After Public Hearing)

Certified copy w/cover letter:

PG&E

AT&T

Pacific Bell

Central Valley Waste Services

Chief Deputy County Surveyor

Denise Wiman, Public Works

Wes Fujitani, Public Works

Community Development Department

Police Department

Fire Department